No. 85-1589

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

IOWA MUTUAL INSURANCE COMPANY,

a corporation,

Petitioner,

vs.

EDWARD M. LaPLANTE, VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN and WELLMAN RANCH COMPANY, a dissolved Montana corporation,

Respondents.

EDWARD M. LaPLANTE AND VERLA LaPLANTES' RESPONSE TO IOWA MUTUAL INSURANCE COMPANY'S PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal district court has diversity jurisdiction over an action prosecuted by a citizen of one state against reservation Indians located in another state.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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Respondents, Edward M. LaPlante and Verla LaPlante (LaPlantes) respectfully respond to Iowa Mutual's Petition for Writ of Certiorari to review the decision of the Ninth Circuit Court of Appeals.

I. STATEMENT OF THE CASE

A. Introduction

Petitioner Iowa Mutual's Writ of Certiorari arises from a diversity action filed in Federal District Court seeking a declaratory judgment that it has no duty to indemnify or defend under insurance policies sold to Blackfeet Indians (Wellmans) and their Ranch Company (Wellman Ranch Co.) for an accident occurring on the Blackfeet Tribal Reservation. Besides the present action the facts of two other related cases are relevant to the Court's discretion to grant Certiorari. One is an action filed in the Blackfeet Tribal Court by the LaPlantes alleging negligence on the part of the Wellmans and bad faith insurance adjusting on the part of Iowa Mutual and Midland Claims. The second is an action filed by Midland Claims (Iowa Mutual intervened as plaintiff) in Federal District Court seeking a declaration that the Tribal Court has no jurisdiction over the LaPlantes' bad faith claim and an injunction prohibiting the Tribal Court from proceeding further.

B. Underlying Negligence and Bad Faith Case in Blackfeet Tribal Court

On May 3, 1982 Edward LaPlante was injured in a single vehicle semi-truck accident on the Blackfeet Indian Reservation in Montana. LaPlante was employed at the time of the accident by the Wellman Ranch Company, which is located on the Blackfeet Reservation and is owned by Robert, Ramona, Craig and Terry Wellman (the Wellmans). LaPlante and the Wellmans are all Blackfeet Indians residing on the reservation. Mr. LaPlante maintains that the accident was the result of his employer's negligence.

Iowa Mutual Insurance Company is the insurer of the Ranch and its Indian owners, the Wellmans. Midland Claims Service, Inc. is an independent insurance adjusting agency who adjusted Mr. LaPlante's claim for Iowa Mutual.

Shortly after Mr. LaPlante was out of the hospital due to

his injuries, Mr. LaPlante was contacted at his residence on the reservation by agents of Midland Claims. After a number of contacts by telephone, letter and in person, a settlement could not be reached and Mr. LaPlante and his wife, Verla LaPlante (also an enrolled Blackfeet Indian) filed a Complaint in Blackfeet Tribal Court.

The Complaint stated two causes of action. Count One stated a negligence personal injury action against the Wellman Ranch and its individual Indian owners. Count Two alleged a bad faith insurance adjusting claim against Iowa Mutual Insurance Company and Midland Claims.

As part of its defense, Iowa Mutual answered the Complaint by stating that Mr. LaPlante's injuries were not covered by any of the insurance policies it had sold to the Wellman Ranch or its individual owners. The LaPlantes have moved for summary judgment on this defense. Both Iowa Mutual and the LaPlantes have briefed and orally argued the issues involved in that motion, i.e., whether Iowa Mutual has a duty to indemnify or defend the Wellmans under the language of the insurance policies. The Blackfeet Tribal Court has taken the motion under advisement and has not yet ruled. The rest of the case is still pending.

C. The Present Case, Iowa Mutual's Federal Declaratory Action Seeking Interpretation of the Insurance Policy

Subsequent to the filing of the Tribal Court action, Iowa Mutual filed the present diversity action in Federal District Court against the LaPlantes, the Wellmans and the Wellman Ranch Company. Iowa Mutual sought a declaratory judgment that it had no duty to indemnify or defend the Ranch or the Wellmans because the LaPlantes' claims fell outside the relevant insurance policies.

The LaPlantes moved to dismiss the declaratory action. In an Order dated September 20, 1984 the United States District Court Judge granted LaPlantes' motion. Noting that all of the named Defendants are members of the Blackfeet Indian Tribe and that the accident scene at issue occurred on the Blackfeet Indian Reservation, the Court relied on *R.J. Williams Company vs. Fort Belknap Housing Authority*,

719 F.2d 979 (9th Cir., 1983) to dispose of the jurisdictional issue presented. Specifically that in a civil controversy arising on the Indian reservation the Blackfeet Tribal Court must be afforded an opportunity to determine its own jurisdiction. Therefore, the assertion of diversity of jurisdiction in the first instance by the Federal Court was inappropriate.

Iowa Mutual appealed to the Ninth Circuit. The Ninth Circuit affirmed the District Court's dismissal of Iowa Mutual's declaratory proceeding. The circuit panel reaffirmed the validity of *R.J. Williams* on the diversity issue. It noted that where a state court is precluded from hearing a case, a Federal District Court should also be precluded from hearing the case as Federal Courts, sitting in diversity, operate as adjuncts to state courts. (Petitioner's Appendix, page 5a, citing *Woods vs. Interstate Realty Company*, 337 U.S. 535, 538 (1949)).

The Ninth Circuit concluded that *R.J. Williams* was consistent with *National Farmers Union Insurance Companies vs. Crow Tribe of Indians*, 105 S.Ct. 2447, (1985). In *National Farmers Union* the Supreme Court recognized that a tribal court may have jurisdiction over non-Indians in an action arising from an accident within the reservation. The Court held that the existence of tribal court jurisdiction is to be decided in the first instance by the tribal court itself. 105 S.Ct. at 2454.

Iowa Mutual sought a rehearing en banc by the entire Ninth Circuit. This request was declined on December 27, 1985, from this decision Iowa Mutual now petitions for a Writ of Certiorari review.

D. Federal Declaratory Action Seeking Declaration that the Tribal Court has No Jurisdiction Over LaPlantes' Bad Faith Claim

Subsequent to the filing of the tribal court action Midland Claims filed a separate action in Federal District Court seeking a declaration that the Blackfeet Tribal Court had no jurisdiction over the LaPlantes' bad faith claim against Midland Claims and Iowa Mutual and and injunction prohibiting the Tribal Court from proceeding further. Iowa Mutual intervened in this action as plaintiff. The LaPlantes as well as the Blackfeet Tribal Court and Blackfeet Tribe were defendants.

Prior to the U.S. Supreme Court's decision in *National Farmers Union Insurance Company vs. Crow Tribe of Indians*, supra, the District Court dismissed Midland's Complaint for failure to state a federal claim upon which relief could be granted. Midland Claims and Iowa Mutual appealed. The U.S. Supreme Court's decision in *National Farmers Union* was then handed down. The Ninth Circuit remanded the appeal to District Court for a determination in light of *National Farmers Union*.

Iowa Mutual, Midland Claims and the LaPlantes cross-moved for summary judgment on the issue of jurisdiction. The Blackfeet Tribal Court and the Blackfeet Tribe moved to dismiss for failure of Midland Claims and Iowa Mutual to exhaust Tribal Court remedies. In a decision dated March 18, 1986 the District Court dismissed Midland Claims' case without prejudice. (Appendix 1a). The Court's decision was based on the fact that Midland Claims and Iowa Mutual had failed to exhaust their remedies under tribal law. Specifically, the jurisdictional issue had not been presented to the Blackfeet Triabl Court of Appeals.

II. SUMMARY OF ARGUMENT

The positions of the Eighth and Ninth Circuit regarding diversity jurisdiction over reservation Indians are not in conflict when applied to the facts of the present case. Both Circuits agree that where Federal diversity jurisdiction would interfere with tribal self-government or where an outsider is attempting to foist non-tribal jurisdiction on Indians, the Federal Court should refuse to accept jurisdiction.

In the present case Iowa Mutual has candidly admitted that it filed the present diversity action in order to avoid tribal court jurisdiction. It fears local prejudice due to the

fact that all of the individual Defendants are members of the Blackfeet Tribe (Petitioner's Brief, page 13). Iowa Mutual is attempting to foist non-tribal jurisdiction on Indian Defendants.

In addition, the acceptance of federal diversity jurisdiction would unduly interfere with the Tribal Court's proceedings which are presently pending. In the LaPlantes' action in Blackfeet Tribal Court, Iowa Mutual raised the defense that its insurance policies did not cover the LaPlantes' in the accident in question. It has also argued that the Tribal Court does not have jurisdiction to decide the insurance coverage issue. These motions and issues have been briefed and argued to the Tribal Court. It has not yet decided the issue. The issues pending in the Tribal Court are identical to those which Iowa Mutual seeks to have determined in the present diversity action. In effect, Iowa Mutual seeks to pre-empt the Tribal Court from deciding the issue. This would unjustly interfere with the Tribe's right of self-government.

Under the facts of this case the positions of the Ninth and Eighth Circuits are the same. Diversity jurisdiction would be refused.

III. ARGUMENT

A. Under Facts of the Present Case the Positions of the Ninth Circuit and Eighth Circuit are Not in Conflict

While it is true there may be conflict between the positions of the Ninth Circuit and Eighth Circuit regarding diversity jurisdiction involving reservation Indians, this case is not an appropriate one to resolve that conflict. Under the undisputed factual circumstances of the present case the positions of the Eighth Circuit and Ninth Circuit are not in conflict.

Iowa Mutual contends that the Eighth Circuit Case of *Poitra vs. Demarrias*, 502 F.2d 23 (1974), cert. denied 421 U.S. 934 (1975) and the Ninth Circuit position articulated most recently by *R.J. Williams vs. Fort Belknap Housing Authority*, 719 F.2d 979 (9th Cir., 1983), cert. denied 105

S.Ct. 3476 (1985) are in direct conflict on the issue of diversity jurisdiction for reservation Indians. However, in the present case the positions articulated by the Eighth and Ninth Circuit would be the same. Federal jurisdiction would be denied.

In *R.J. Williams* a non-Indian contractor filed suit in Federal Court against the Tribal Housing Authority which had seized some of the contractor's property pursuant to a Tribal Court Writ of Attachment. *R.J. Williams*, 719 F.2d at 908-81. The Ninth Circuit initially observed that the contractor's action could not have been brought in Montana State Court because Montana had never assumed general jurisdiction over Indian tribes within its boundaries. *Id* at 983 and Note 3. It followed its earlier decisions by holding that where a State Court is precluded from hearing a case, a Federal District Court should also be precluded from hearing the case because the Federal Court, sitting in diversity, operates as adjuncts to State Courts. *Id*, citing *Wood vs. Interstate Realty Company*, 337 U.S. 535, 538 (1949); see *Hot Oil Services, Inc. vs. Hall*, 366 F.2d 295 (9th Cir. 1966); *Littell vs. Nakai*, 344 F.2d 486 (9th Cir., 1965), cert. denied 382 U.S. 986 (1966).

The Ninth Circuit concluded that the Federal Courts are divested of diversity jurisdiction whenever the dispute involved the exercise of the tribe's responsibility for self-government, but that jurisdiction was not divested when the tribe has not itself manifested an interest in adjudicating the dispute. Because the Ninth Circuit was unable to determine whether the Tribal Court had assumed jurisdiction, it reversed and remanded holding the determination of whether diversity jurisdiction existed would have to await the Tribal Court's decision on whether or not it would assume jurisdiction. *Id* at 983 and 985.

In *Poitra vs. Demarrias*, supra, a reservation Indian of North Dakota brought a wrongful death action for the death of her son against a South Dakota reservation Indian in the North Dakota Federal District Court. The Eighth Circuit noted that the North Dakota State Court lacked jurisdiction over the civil action because the Indian tribe had not consented to state jurisdiction. It held that an Indian

plaintiff under the circumstances of that case could bring a diversity action regardless of whether the State Court could entertain the action.

The Eighth Circuit specifically indicated that it did not consider the decision in conflict with the position taken by the Ninth Circuit. It distinguished the Ninth Circuit decisions of *Hot Oil Service, Inc. vs. Hall*, 366 F.2d 295 (9th Cir., 1966) and *Littell vs. Nakai*, 344 F.2d 486 (9th Cir., 1965) on the grounds that neither case involved the application of a state created right under which an individual Indian sought to recover from another Indian. The Eighth Circuit noted that the Ninth Circuit's cases were very different in that they involved tribal self-government policies or an attempt by an outsider to "foist jurisdiction" on Indians. *Id.* 28-29. The Eighth Circuit stated:

> "... The refusal by the courts to accept jurisdiction seems correct under those facts." *Id.* at 29.

Thus, where an outsider attempts to use diversity jurisdiction to interfere with self-government policies of the Tribe or "foist" jurisdiction on Indians, the Eighth Circuit agreed with the Ninth Circuit's position that diversity jurisdiction should be denied.

In the present case Iowa Mutual makes no bones of the fact that the individual Defendants are all reservation Indians and that it seeks diversity jurisdiction in order to avoid the jurisdiction of the Blackfeet Tribal Court. (Iowa Mutual's Petition for Writ of Certiorari, page 12-13.) It describes its fear of local prejudice and states that the Blackfeet Judges are, in its opinion, susceptible to political influence. This, Iowa Mutual argues, is because the Judges are Members of the Blackfeet Tribe as are the individual Defendants. The Petitioner fails to note that the judge sitting on the LaPlante case in Tribal Court is not a Blackfeet Indian. He is a Flathead Indian Judge residing on the Flathead Indian Reservation. He was specially appointed to sit on this case by the Blackfeet Tribal Court.

Nevertheless, Petitioner's arguments are ethnocentric. Its own fear of tribal jurisdiction does not justify foisting a

non-tribal jurisdiction on Indians. Under these factual circumstances the positions of the Eighth Circuit and Ninth Circuit are consistent. Diversity jurisdiction would be declined.

Also, Iowa Mutual failed to inform the Court that the identical issue it seeks to have determined in its diversity action is presently pending in the Blackfeet Tribal Court. In Tribal Court, Iowa Mutual raised the defense that the insurance policies sold to the Wellmans did not cover the accident. The LaPlantes have moved the Tribal Court for summary judgment on that defense. The motion has been briefed and orally argued by both parties. As part of its argument, Iowa Mutual requested the Tribal Court to decline jurisdiction on the insurance issue. The Tribal Court's decision on this motion has not as yet been handed down.

The granting of federal diversity jurisdiction in this case would effectively pre-empt the Tribal Court from deciding the issues, involved in the action, which was first filed in its Court. This would be an undue interference with the Tribal Court proceedings. This interference is what this Court spoke of with disfavor in *National Farmers Union Insurance Company vs. Crow Tribe*, 105 S.Ct. 2447 (1985). It is also the type of interference the Eighth Circuit spoke of in *Poitra* when it indicated diversity jurisdiction should be refused in cases involving Tribal self-government policies. *Poitra vs. Demarrias*, supra at 28-29.

Once the Tribal Court has determined the extent of its own jurisdiction to decide the insurance questions and the tribal remedies are exhausted, Iowa Mutual may have an action under 28 U.S.C. 1331 to determine whether the Tribal Court has exceeded its own jurisdiction or an action under 28 U.S.C. 1332 for a declaratory judgment involving the insurance issues. Until such time, however, for the reasons articulated in *National Farmers Union* and in the interest of comity, the extent of the Tribal Court's jurisdiction to determine the insurance issue should be conducted in the first instance by the Tribal Court where the original action was filed and the issue is pending. There does not

appear to be a conflict between the Circuit Courts on these facts.

CONCLUSION

The Writ of Certiorari should be denied. The present case is not an appropriate fact situation to resolve any conflicts which may exist between the Eighth Circuit and Ninth Circuit regarding reservation Indian diversity cases. Under the facts of this case the Eighth Circuit and Ninth Circuit positions do not conflict.

Iowa Mutual is attempting to foist jurisdiction on Indian Defendants. Further, the Tribal Court is presently deciding the issues which Iowa Mutual's diversity action seeks to have litigated. It would be inappropriate for the Federal Court to step in prior to the time the Tribal Court has made its own determination.

DATED this 4th day of April, 1986

BOTTOMLY & GABRIEL
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Edward M. LaPlante &
Verla LaPlante

CERTIFICATE OF MAILING

I do hereby certify that a true and correct copy of the within Response to Iowa Mutual Insurance Company's Petition for Writ of Certiorari was duly mailed, postage prepaid, on the 16th day of April, 1986, to:

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

NO. CV-84-010-GF

MIDLAND CLAIMS SERVICE, INC.
Petitioner,

vs.

EDWARD M. LaPLANTE, et al.
Defendants

IOWA MUTUAL INSURANCE CO.
Plaintiff in Intervention

vs.

EDWARD M. LaPLANTE, et. al.
Defendants

MEMORANDUM AND ORDER

As the record adequately reflects, this is an action for declaratory and injunctive relief filed pursuant to 28 U.S.C. Sec. 1331. The plaintiffs challenge the propriety of the Blackfeet Tribe of Indians asserting civil jurisdiction over those entities in a personal injury and "bad faith" insurance action presently pending in the Blackfeet Tribal Court. The action is now before this court in the wake of the Supreme Court's decision in *National Farmers Union*

Insurance Company vs. Crow Tribe of Indians, 471 U.S. _____, 105 S.Ct. 2447 (1985), for a determination of whether the action should be allowed to proceed, held in abeyance, or dismissed pending exhaustion of the remedies available in the Tribal Court.[1] Having reviewed the record, and applying the rationale espoused in *National Farmers*, the court is compelled to DISMISS this action without prejudice to the plaintiffs pursuing the relief sought after they have exhausted the remedies available under Blackfeet Tribal Law.

The statutory grant of jurisdiction contained in Section 1331 of the Judicial Code will support claims founded upon federal common law. *Illinois vs. City of Milwaukee*, 406 U.S. 91, 100 (1972). The import of the *National Farmers* decision lies primarily in the Court's recognition that Section 1331 vests the federal courts with jurisdiction to determine whether a tribal court has exceeded the lawful limits of its jurisdiction. *National Farmers Union Ins. Co. vs. Crow Tribe*, 105 S.Ct. at 2452. As a secondary consideration, the Court, in the interest of comity, held that the existence and extent of a tribal court's jurisdiction requires an examination which should be conducted in the first instance by the Tribal Court itself. *Id.* at 2454.

The present controversy has its genesis in transactions which occurred within the boundaries of the Blackfeet Indian Reservation. Accordingly, the rationale of *National Farmers* would dictate that the Tribal Court be the first arbiter of whether or not that entity possesses jurisdiction over the subject matter of the controversy, unless the controversy falls within one of the narrow exceptions to the

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[1] The court notes that the plaintiffs and the defendant LaPlantes have all moved for summary judgment. The Blackfeet Tribe, however, vehemently asserts that resolution of the jurisdictional issue upon the merits by this court is inappropriate until such time as the remedies available the plaintiffs under Blackfeet Tribal law have been exhausted.

exhaustion requirement outlined in the *Farmers Union* case:

> We do not suggest that exhaustion would be required where an assertion of tribal jurisdiction "is motivated by a desire to harass or is conducted in bad faith."...or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction.

105 S.Ct. at 2454 n.21 (citation omitted).

The plaintiffs contend that the present action may proceed to disposition in light of the fact that the Tribal Court has already determined that it possesses jurisdiction over both the subject matter and the parties to this controversy. The remedies available in the Tribal Court system, the plaintiffs submit, have been sufficiently exhausted so as to satisfy the concern for comity which prompted the Court's rationale in *National Farmers*. The plaintiffs further suggest that the present controversy falls within one of the exceptions outlined by the court in *National Farmers*. The court disagrees with both of the plaintiffs' contentions.

The exhaustion requirement recognized by the Court in *National Farmers* is predicated upon the congressional policy of supporting tribal self-government and self-determination. 105 S.Ct. 2545. Recognition of that policy prompts this court to conclude that exhaustion of all remedies available under tribal law is prerequisite to the exercise of this court's jurisdiction under Section 1331. The decision of the Tribal Court regarding its jurisdiction over this controversy has been made at the trial court level; the jurisdictional issue having not, as yet, been presented to the Tribal Court of Appeals. Until such time as the appellate process has been exhausted, this court is precluded from asserting jurisdiction over this controversy pursuant to 28 U.S.C. Sec. 1331. To conclude otherwise, this court would have to ignore the rationale of *National*

Farmers and the congressional policy upon which that rationale is premised.

The plaintiffs next suggest that the Tribal Court's assertion of jurisdiction over the present controversy is violative of the express jurisdictional prohibitions contained in the Constitution and ordinances of the Blackfeet Tribe of Indians. The plaintiffs rely primarily upon Article VI, Section 1(k) of the Tribe's Constitution which vests the Tribal Council with the authority to "... establish minor courts for the adjudication of claims or disputes arising amongst members of the Tribe." The plaintiffs submit that because the Tribal Court is exceeding the express limitation placed upon its jurisdiction, they need not exhaust the remedies available under Blackfeet Tribal law, but may directly proceed to challenge the Tribe's assertion of jurisdiction in federal court pursuant to 28 U.S.C. Sec. 1331. The court disagrees.

The plaintiff's invocation of the limited exception to the exhaustion requirement recognized in *National Farmers* ignores the principle, well recognized in this Circuit, that the interpretation of tribal law is a matter for the tribal courts. *See, A&A Concrete, Inc. vs. White Mountain Apache Tribe*, No. 85-2165 (9th Cir. decided Feb. 6, 1986); *R.J. Williams Co. vs. Fort Belknap Housing Authority*, 719 F.2d 979, 983 (9th Cir. 1983). The court sees no valid distinction between the Tribal ordinances at issue in both *A&A Concrete* and *R.J. Williams* and the Blackfeet Constitution and ordinances at issue in the case at bar. More importantly, however, the plaintiffs' position is premised on a misconception of the exception recognized by the Court in the *National Farmers* case.

28 U.S.C. Sec. 1331 vests federal district courts with jurisdiction over "civil actions arising under the Constitution, laws, or treaties of the United States." The rationale of the *National Farmers* case does not stand for the proposition that the federal courts are vested with jurisdiction under Section 1331 to interpret the constitutions or laws of the various Indian tribes. Federal question jurisdicton under Section 1331 simply cannot be predicated upon tribal law. *See also, Boe vs. Fort Belknap Indian Communi-*

ty of Fort Belknap, 642 F.2d 276 (9th Cir. 1981). The basis of federal question jurisdiction recognized by the Court in the *National Farmers* case, is that federal common law which has curtailed the sovereign powers of the various Indian tribes. *See, National Farmers*, 105 S.Ct. at 2451-52; *see also, United States vs. Wheeler*, 435 U.S. 313 (1978); *Montana vs. United States*, 450 U.S. 544 (1981). The law upon which the plaintiffs rely in invoking the exception to the exhaustion requirement is not express federal law which has divested the Blackfeet Tribe of jurisdiction over the controversy at issue. Because tribal courts are the first and final arbiters of tribal law, it would be incongruous for this court to conclude that the Court in the *National Farmers* case was referring to anything but federal law when it outlined the exception to the exhaustion requirement.

Review of the record convinces the court that dismissal of this action, without prejudice, is appropriate at this juncture. There exists no compelling reason why the matter should be held in abeyance.

Therefore, for the reasons set forth herein,

IT IS HEREBY ORDERED that the present action be DISMISSED without prejudice.

DATED this 18th day of March, 1986.

PAUL G. HATFIELD
UNITED STATES
DISTRICT COURT JUDGE